

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

August 10, 2021 at 2:00 p.m.

1.	<u>21-22590-E-13</u> <u>MET-1</u>	KENNETH SMITHOUR Mary Ellen Terranella	MOTION TO EXTEND AUTOMATIC STAY 7-23-21 [9]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 23, 2021. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

The Motion to Extend the Automatic Stay is granted.
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Kenneth Lee Smithour ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 20-23404) was dismissed on June

20, 2021, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 20-23404, Dckt. 81, June 21, 2021. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because he failed to make plan payments after his non-filing spouse was unable to return to work after January 2021 due to medical issues and Debtor himself was unable to return to work in November 2020 due to a work injury.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. *See, e.g., In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814–15.

Debtor has sufficiently demonstrated the case was filed in good faith/rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The Motion is granted, and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the

hearing.

The Motion to Extend the Automatic Stay filed by Kenneth Lee Smithour (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

2. [19-25716-E-13](#) **JOSEPHINE WRIGHT** **MOTION TO MODIFY PLAN**
[TJW-2](#) **Timothy Walsh** **6-23-21 [69]**
2 thru 3

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 23, 2021. By the court’s calculation, 48 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Modified Plan is denied.

The debtor, Josephine Wright (“Debtor”) seek confirmation of the Modified Plan to provide for an adjustment in the plan payments from month to month. Declaration, Dckt. 72. The Modified Plan provides plan payments of \$439.00 beginning June 2021 through the balance of this 60-month plan, and a 100 percent dividend to unsecured claims totaling \$11,852.00. Modified Plan, Dckt. 70. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on July 26, 2021. Dckt. 80. Trustee opposes confirmation of the Plan on the basis that:

- A. The Plan will not complete timely.
- B. Debtor may not be able to afford the Plan.

DISCUSSION

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 85 months due to remaining amounts to be paid including Trustee fees which total \$28,034.58 and thus at the plan payment amount it would take Debtor another 21 months to account for the remaining amounts. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee is uncertain of Debtor’s ability to pay where Debtor has not filed supplemental Schedules I and J and the most recent Schedule I and J were last filed on September 11, 2020. Without an accurate picture of Debtor’s financial reality, the court cannot determine whether the Plan is confirmable.

The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Josephine Wright (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 19, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is ~~XXXXX~~.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Josephine Wright ("Debtor"), is delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on May 24, 2021. Dckt. 65. Debtor's counsel requests an evidentiary hearing and states that to the best of Debtor's knowledge, Debtor is current on her plan payments. No testimony or other evidenced is provided in opposition to the Motion.

DISCUSSION

Delinquent

Trustee presents evidence that Debtor is \$886.00 delinquent in plan payments, which represents multiple months of the \$415.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

At the hearing Debtor's counsel acknowledged the defaults and reported that Debtor will prosecute a modified plan. The Trustee agreed to a continuance to allow Debtor to so prosecute the case.

Trustee's Status Report

On July 13, 2021 Trustee filed a Status Report informing the court that Debtor has filed a Motion to Modify the plan which has been set for August 10, 2021. Dckt. 76. Trustee notes that \$7,848.00 in plan payments are due. Moreover, Trustee will oppose the modified plan on the basis that Debtor has failed to file current Schedule I and J and that the Plan will exceed the number of months as allowed by the bankruptcy code (84 months) where no evidence has been presented that the delinquency is related to the COVID-19 pandemic.

Debtor's Modified Plan

Debtor filed a Motion to Confirm Modified Plan and a proposed Modified Plan on June 23, 2021. Dckts. 69, 70. The motion has been set for hearing on August 10, 2021 at 2:00 p.m.

Trustee requests the instant motion be continued to August 10, 2021 and be heard in conjunction with the Motion to Confirm the modified plan. *Id.*

August 10, 2021 Hearing

Debtor's Motion to Confirm Plan was denied, and the proposed plan was not confirmed.

At the hearing **xxxxxxx**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss this Chapter 13 Case filed by David Cusick, the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **xxxxxxx**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 25, 2021. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Confirm the Modified Plan is denied.</p>
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The debtors, Robert Aurther DeCelle, III and Donna Marie DeCelle ("Debtors") seek confirmation of the Modified Plan after obtaining a loan modification, are surrendering a car that has significant mechanical issues, and leasing a vehicle. Declaration, Dckt. 142. The Modified Plan provides payments of \$615.00 for the duration of the plan, and a zero (0) percent dividend to unsecured claims totaling \$66,069.60. Modified Plan, Dckt. 141. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 26, 2021. Dckt. 155. Trustee opposes confirmation of the Plan on the basis that:

1. The debtors propose to move Class 1 creditor Freedom Mortgage to Class 4 and reduce pre and post-petition arrears to the amounts already paid pursuant to a loan modification effective March 2021, where Debtor has not set for hearing a permanent loan modification and its terms are unknown.

2. The debtors are delinquent \$3,541.91 under the confirmed plan and \$615.00 under the proposed plan.
3. Plan term totals 59 months instead of the stated 60 months.
4. The debtors net income is contingent on the court granting the debtors' motion of this lease.

DISCUSSION

Feasibility

Debtors may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee, whether the plan is Debtors have failed to provided the terms of a permanent loan modification; and the Plan is contingent on the court granting Debtors the authority to enter into a lease. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Delinquency

The Chapter 13 Trustee asserts that Debtors are \$3,541.91 delinquent in plan payments, which represents multiple months of the plan payment. Moreover, Debtors are delinquent \$615.00 in plan payments under the proposed plan. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Robert Aurthur DeCelle, III and Donna Marie DeCelle ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 29, 2021. By the court’s calculation, 42 days’ notice was provided. 28 days’ notice is required.

The Motion to Incur Debt has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Incur Debt is xxxxxxx.

Robert Aurther DeCelle, III and Donna Marie DeCelle (“Debtors”) seeks permission to lease a 2021 Honda Accord, with a total financing price of \$29,095.00 and monthly payments of \$341.85 to American Honda Finance, and a down-payment of \$916.68. The lease is for three years, with the lease term expiring March 5, 2024.

Trustee’s Opposition

It appears that the Trustee’s Opposition to the Motion to Confirm has been erroneously uploaded twice. Once correctly for the Motion to Confirm and the second time incorrectly for the Motion to Incur Debt. Dckts. 152, 155.

DISCUSSION

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, “including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions.” FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr.

W.D. Ky. 2007).

Reasonableness

Debtor does not address the reasonableness of incurring debt to lease/purchase a brand new vehicle while seeking the extraordinary relief under Chapter 13 to discharge debts. It is also unclear to the court how in good faith Debtor could propose to purchase a new car when paying holders of unsecured claims nothing. A debtor driven to seek the extraordinary relief available under the Bankruptcy Code is hard pressed to provide a good faith explanation as to how a “reward” for filing bankruptcy is to lease/purchase a new car.

The lease payment is \$341.85 a month. Not a grossly unreasonable number. However, Debtor provides no discussion of other options, including purchasing a used car. While the court acknowledges that used car prices are at an all time high, it is an option. A four year loan for \$20,000 at 4% interest would require monthly payments of \$451.58, more than \$100 a month greater than the proposed lease.

At the hearing, **XXXXXXX**

The Motion is **XXXXXXX**.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Incur Debt filed by Robert Aurther DeCelle, III and Donna Marie DeCelle (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **XXXXXXX**.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors and Debtor's Attorney on July 13, 2021. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----
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The Objection to Confirmation of Plan is sustained.
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

- A. The Chapter 13 debtors, Matthew Donald Blasingame and Kristie Marie Blasingame ("Debtor"), have failed to provide tax returns or pay advices.
- B. Debtor may not be able to make plan payments.

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide Pay Stubs & Tax Returns

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the

sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). Also, the Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide all necessary pay stubs and has failed to provide the tax transcript. Those are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee, Debtor admitted at the Meeting of Creditors that the income listed on Schedule I for Mr. Blasingame is anticipated income, not actual, and that her employment information listed on Schedule I is incorrect. Additionally, Trustee asserts that Debtor admitted that Ms. Blasingame has not worked for Placer County since September 2020. It is not clear if her income of \$7,926.00 is accurate. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 23, 2021. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Confirm the Modified Plan is denied.</p>
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The debtor, Matthew Kent Rubb ("Debtor") seeks confirmation of the Modified Plan to account for Debtor's fiancé losing employment and now having a child. Declaration, Dckt. 64. The Modified Plan provides:

1. Debtor will skip up to six (6) plan payments (July 2021 through December 2021)
2. And unless Debtor resumes sooner, plan payments of \$300.00 commencing January 2022 through completion of the plan, and
3. a zero (0) percent dividend to unsecured claims totaling \$12,350.00.

Modified Plan, Dckt. 66. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 26, 2021.

Dckt. 68. Trustee opposes confirmation of the Plan on the basis that:

- A. The Plan fails to state the amount paid and proposes to skip plan payments.
- B. The Plan exceeds the amount of time allowed by the Bankruptcy Code.

DISCUSSION

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee, he is unable to administer the plan where the debtor does not state an amount paid. The debtor proposes to skip up to an additional 6 plan payments (July 2021 through December 2021) unless debtor resumes making payments earlier. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 70 months due to where priority claims including trustee fees owed total approximately \$11,410.00 and at Debtor's proposed payment plan of \$300.00 would take an additional 39 months. The debtor will have completed 31 months as of December 2021. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Matthew Kent Rubb ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 27, 2021. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

<p>The Motion to Employ is granted.</p>
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Toni Hendricks Painter ("Debtor") seeks to employ Century 21 M M ("Broker") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of Broker to assist Debtor in marketing and selling the real estate property commonly known as 39 N Front Street, Rio Vista, California ("Property").

Debtor argues that Broker's appointment and retention is necessary to assist Debtor in establishing the fair market value of the Property and to market and sell the Property for the benefit of the Debtor and all creditors in interest.

Ralene Nelson, a Real Estate Agent of Century 21 M M, testifies that she will list the Property and assist Debtor in marketing and selling the Property. Ralene Nelson testifies she and the company do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to

engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Century 21 M M as Broker for the Chapter 13 Estate on the terms and conditions set forth in the Residential Listing Agreement filed as Exhibit A, Dckt. 33. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Employ filed by Toni Hendricks Painter ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Employ is granted, and Debtor is authorized to employ Century 21 M M as Broker for Debtor on the terms and conditions as set forth in the Residential Listing Agreement filed as Exhibit A, Dckt. 33.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

IT IS FURTHER ORDERED that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

IT IS FURTHER ORDERED that except as otherwise ordered by the Court, all funds received by Broker in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors and Debtor’s Attorney on July 13, 2021. By the court’s calculation, 28 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----
-----.

The Objection to Confirmation of Plan is sustained.
--

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that:

- A. The Chapter 13 debtors, Thomas Winton Johnson and Whitney Eriksmoen Johnson (“Debtor”), have failed to provide tax returns.
- B. Debtor have failed to provide pay advices.
- C. Debtor have failed to provide business documents.
- D. Debtor’s Chapter 13 documents are inaccurate.

DISCUSSION

Trustee’s objections are well-taken.

Failure to Provide Pay Stubs & Tax Returns

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). Also, the Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide all necessary pay stubs and has failed to provide the tax transcript. Those are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to File Documents Related to Business

Debtor has failed to timely provide the Chapter 13 Trustee with business documents including:

- A. Questionnaire,
- B. Two years of tax returns,
- C. Six months of profit and loss statements,
- D. Six months of bank account statements, and
- E. Proof of license and insurance or written statement that no such documentation exists.

11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and the Chapter 13 Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee, Debtor failed to list a prior Chapter 7 filing on the petition, case number 16-23512; a 2008 RAV4; any business income for Mrs. Johnson; their water bill expense ranging from \$40 - \$180 per month, and give any details regarding any business interest on item 27 of their Statement of Financial Affairs. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

10. [21-22161](#)-E-13 **NADINE/STEVEN MUENCH** **OBJECTION TO CONFIRMATION OF**
[APN-1](#) **Peter Cianchetta** **PLAN BY MEB LOAN TRUST II, U.S.**
 BANK NATIONAL ASSOCIATION
 7-16-21 [28]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 16, 2021. By the court’s calculation, 25 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----
-----.

<p>The Objection to Confirmation of Plan is sustained.</p>

MEB Loan Trust II, U.S. Bank National Association, not in its individual capacity but solely as trustee (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

- A. The Chapter 13 debtors, Nadine Ann Muench and Steven Edwin Muench (“Debtor”) fail to provide for the curing of Creditor’s arrearage.
- B. Debtor’s plan is not feasible.

DISCUSSION

Creditor's objections are well-taken.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$24,204.30 in pre-petition arrearage. The Plan does not propose to cure those arrearage. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Creditor points the court to Debtor's Plan which provides for monthly payments of \$2,233.51 for 60 months to the Trustee for a base plan amount of \$134,010.60. However, according to Debtors' Schedules, Debtor have a monthly net income of negative \$8,893.49. Thus, when accounting for the arrearage due to Creditor, the plan payments will be insufficient to fund the Plan. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by MEB Loan Trust II, U.S. Bank National Association, not in its individual capacity but solely as trustee ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 29, 2021. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Modified Plan is XXXXX.

The debtor, Ronald Steven Wade ("Debtor") seeks confirmation of the Modified Plan to adjust the plan payments and provide for the completion of the plan with a lump sum payment from the sale of his residence. Declaration, Dckt. 27. The Modified Plan provides for plan payments of \$919.00 for 20 months, followed by a lump sum payment of \$37,000.00 by September 25, 2021 from the sale of Debtor's residence, and a ten (10) percent dividend to unsecured claims totaling \$122,665.00. Modified Plan, Dckt. 23. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 27, 2021. Dckt. 37. Trustee opposes confirmation of the Plan on the basis that:

- A. The proposed Plan is not Debtor's best effort.

DISCUSSION

Not Best Effort

The Chapter 13 Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

According to Trustee, Debtor is over median income and in a 60-month plan paying 10% to unsecured creditors. Debtor now proposes to complete the plan by month 21 (September 25, 2021) with a lump sum payment of \$37,000.00 from the sale of his home with no increase in the percentage to unsecured creditors which does not comply with §1325(b). Thus, the court may not approve the Plan.

Debtor filed a Supplemental Declaration stating the following:

1. The proposed Plan should have provided that property of the estate shall revert in Debtor upon confirmation as provided for in the confirmed plan.
2. Debtor wants to complete his plan with a lump sum payment because he is retiring and is concerned he will be unable to afford the plan payment after he retires.
3. The marital dissolution agreement provides that he must sell the Property by 2026 and pay his former wife 50% of the proceeds.
4. Debtor is willing to **increase the amount of the lump sum payment from \$37,000 to \$40,000 to increase** the amount to be paid to general unsecured creditors.
5. Debtor argues that the plan is the best interest of both himself and his creditors as they will receive their money earlier and both creditors.

Dckt. 42.

Debtor has confirmed a Plan in which he commits to the required 60 months in “bankruptcy purgatory” in exchange for receiving his “bankruptcy blessing” of a discharge. Now, due to the change in his marital status, the home to be protected by the bankruptcy must be sold. While the property does not have to be sold until 2026, California real estate prices are at an all time high and interest rates are at a historic low. It is commonly accepted that this cannot continue, interest rates will climb and property values will tumble (some say plummet).

Under the requested modification, Debtor will accelerate the payment of the percentage dividend (increasing it slightly) to the creditors with unsecured claims, putting the money in their hands today, rather than having it spread out over the remaining three years of the Plan. A dollar today is better than the promise of a dollar 1095 days from now.

The imposition of the applicable commitment period is required pursuant to 11 U.S.C. § 1325(b) for the confirmation of a plan. In providing for confirmation of a modified plan, one which changes the terms of the Chapter 13 plan confirmed under the provisions of 11 U.S.C. § 1325 (which included the requirements of 11 U.S.C. § 1325(b)), Congress provides in 11 U.S.C. § 1329(b) that the law applicable to confirmation of a modified plan is:

(b)

(1) Sections 1322(a), 1322(b), and 1323(c) of this title, and the requirements of section **1325(a)** of this title apply to any modification under subsection (a) of this section.

11 U.S.C. § 1329(b) (emphasis added). The provisions of 11 U.S.C. § 1325(a) do not include the minimum applicable commitment period.

However, the provisions of 11 U.S.C. § 1325(a) state, “(a) Except as provided in subsection (b), the court shall confirm a plan if—” This has led some to conclude that the applicable commitment provisions of 11 U.S.C. § 1325(b) are incorporated by this reference into 11 U.S.C. § 1329(b), thereby precluding any modification of a plan that did not still obligate the debtor to the original applicable commitment period notwithstanding the post-confirmation changes.

Neither party provides the court with this analysis.

Debtor provides an explanation as to why and how he cannot continue to afford the payments with his retirement and move to Southern California. If the modification is not allowed and the Debtor were to just continue going forward, Debtor would suffer a reduction in income with retirement, and then modify the Plan to reduce the payments to creditors.

At the hearing, **XXXXXXX**

~~The Modified Plan complies / does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.~~

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Ronald Steven Wade (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Modified Plan is

XXXXXX.

12. [19-27762](#)-E-13 RONALD WADE MOTION TO SELL AND/OR MOTION
WW-4 Mark Wolff TO EMPLOY NICK SADEK SOTHEBY'S
INTERNATIONAL REALTY AS
REALTOR(S), MOTION FOR
COMPENSATION FOR NICK SADEK
SOTHEBY'S INTERNATIONAL
REALTY, REALTOR(S)
7-20-21 [\[29\]](#)

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 20, 2021. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

The Motion to Sell Property is granted.

The Bankruptcy Code permits Ronald Steven Wade, the Chapter 13 Debtor, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 1030 Landmark Circle, Lincoln, California ("Property"). Movant also requests the court authorize the employment and commission payment of real estate broker, Nick Sadek Sotheby's International Realty ("Broker").

The proposed purchaser of the Property is Millsha Pandey and Daniel Bowers, and the terms of the sale are:

- A. The purchase price is all cash in the amount of \$450,000.00.
- B. All costs of sale, such as escrow fees, title insurance, and broker's commissions will be paid in full from the sale proceeds.
- C. Seller to pay for owner's title insurance policy, county transfer tax, city transfer tax, Homeowners' Association transfer fees and for related documents required by Civil Code § 4525.
- D. Stove is include in the sale.
- E. According to the Counteroffer, should the home not appraise, the sales price shall not be less than \$425,000.

Trustee's Response

Trustee notes the following:

- 1. Debtor failed to file a separate motion to approve the employment and payment of real estate broker.
- 2. There is a discrepancy in purchase price: the Residential Purchase Agreement lists the purchase price as \$450,000, the seller counter offer states in part that should the home not appraise, the sales price shall not be less than \$425,000; yet the Listing Agreement lists the sales price at \$434,000. A \$25,000.00 difference exists as to the purchase price and counter offer.
- 3. No Closing Statement was filed with this Motion; it is not clear if the sale will fund the debtors proposed modified plan.
- 4. The Motion also calls for 5% in broker fees of approximately \$22,500.00 (\$450,000.00 x 5%) and a 50% division of the net proceeds to debtor's ex-wife. Based on the Trustee's calculation, if that is the actual sale price, the above reflects \$60,776.51 of possible net proceeds.
- 5. Trustee asserts that where the plan calls for a lump sum payment of \$37,000.00 and where no closing statement was filed, it is not clear if the sale provides sufficient funds into the proposed modified plan.

Dckt. 35.

Creditor's Limited Opposition

Secured Creditor does not oppose the sale provided that the sale is completed within six (6)

months from the date of the Order granting the Motion; adequate protection payments are made up to the completion of the sale; and that Secured Creditor is paid in full out of escrow pursuant to an updated payoff demand. Dckt. 40. Additionally, Creditor asserts that in the event the sale does not go through or that Debtor fails to make adequate protection payments, Creditor will file a Motion for Relief. *Id.*

DISCUSSION

Employment of Broker

Through this motion, Debtor seeks approval to employ Cherie A. Schaller as his real agent (“Agent”) and Nick Sadek Sotheby’s International Realty as broker (“Broker”) for the purpose of marketing and selling the Property.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee’s duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Nick Sadek Sotheby’s International Realty as Broker for the Chapter 13 Estate on the terms and conditions set forth in the Residential Listing Agreement filed as Exhibit B, Dckt. 31. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

With respect to this failure to comply with the Federal Rule of Bankruptcy Procedure that do not allow for joining multiple claims for relief, that may be taken into account when counsel for the Debtor seeks payment of additional fees in this case, and the determination of what a reasonable hourly rate is for an attorney who fails to comply with the Federal Rules of Bankruptcy Procedure.

Approval of Commission

Movant has estimated that a five (5) percent broker’s commission from the sale of the Property will equal approximately \$~~xxxx.xx~~. Debtor having failed to file a Closing Statement, Debtor has not provided the amount of the commission.

~~As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than five (5) percent commission.~~

Sale of the Property

As noted by Trustee, the actual purchase price is not clear. The Purchase Agreement states a sales price of \$450,000 but Buyer counter-offer states \$423,000. At the hearing, Debtor clarified that the sales price is \$xxxxx.xx.

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: xxxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it will allow Debtor to complete his plan before retiring.

The Motion is xxxxx.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Sell Property filed by Ronald Steven Wade, the Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~IT IS ORDERED~~ that the Motion to Employ is granted, and Debtor is authorized to employ Nick Sadek Sotheby's International Realty as Broker for Debtor on the terms and conditions as set forth in the Residential Listing Agreement filed as Exhibit B, Dckt. 31.

~~IT IS FURTHER ORDERED~~ that Ronald Steven Wade, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Millsha Pandey and Daniel Bowers or nominee ("Buyer"), the Property commonly known as 1030 Landmark Circle, Lincoln, California ("Property"), on the following terms:

A. The Property shall be sold to Buyer for \$xxxx.xx, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 31, and as further provided in this Order.

B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.

C. The Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.

D. The Chapter 13 Debtor is authorized to pay a real estate broker's commission in an amount not more than five percent of the actual purchase price upon consummation of the sale. The five percent commission shall be paid to the Chapter 13

Debtor's broker, Nick Sadek Sotheby's International Realty.

E. ~~No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.~~

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors and Debtor's Attorney on July 14, 2021. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection.

The Objection to Confirmation of Plan is sustained.
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

- A. The Plan is not feasible.
- B. Debtor's plan fails the Chapter 7 liquidation analysis.

DISCUSSION

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee, Debtor are proposing \$694.00 per month for 50 months, however, they may have additional disposable income to pay toward the Plan. Debtor received \$4,186.00 federal tax refund and \$786.00 state refund based on their income for 2020, for a total refund of \$4,972.00. Trustee asserts that at the First Meeting of Creditors, Debtor admitted that these refunds are likely to

continue. Yet, Trustee points out that a review of Schedule I, does not include the additional tax refund income of approximately \$415.00 per month.

Trustee asks that any refund over \$2,000 be committed to the Plan.

Debtor filed a Response indicating that they agree to Trustee's request and offer the following amendment to the Plan:

Beginning January 1st, 2022 and continuing during the pendency of this case Debtors shall pay to the Trustee annually any income tax refunds that exceed \$2,000 annually.

Dckt. 22.

Debtor Fails Liquidation Analysis

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee states that Debtor are taking impermissible deductions by factoring in costs of sale and incorrect trustee's fees, to lower the amount of equity and not pay what the Chapter 7 creditors are owed.

Trustee argues that Debtor should not be allowed to deduct cost of sale on assets that would not otherwise be liquidated in the Chapter 7 or are fully encumbered (either by secured liens or exemptions). Trustee further adding that Debtor are using an incorrect formula and amount for deducting the Chapter 7 Trustee's fees which is causing the deduction to be higher than it should be. Trustee believes the liquidation amount is \$18,149.10, which is comprised of the equity in Debtor's residence.

Unfortunately, the Trustee does not provide the court with this analysis, the assets involved, and the alleged erroneous (and possibly bad faith) statement of the value of assets and the liquidation analysis.

Debtor Response

In their Response, Debtor proposes the following amendment to their plan: Class 7 claims will receive no less than a 9.5 % dividend. Moreover, Debtor provides the following Liquidation Analysis:

Personal Property Liquidation Value is \$0

\$49,161 is the value of Debtors' personal property.

\$21,000 is encumbered by secured claims.

\$28,161 of their personal property is exempt.

Real Property Liquidation Value is \$2,801.75

\$260,000 is the value of Debtors' real property (13 Sutter Street, Woodland, CA)

\$215,800 is encumbered by secured claims.

\$19,665 of their real property is exempt.

\$20,800 is the estimated costs of sale.

\$933.75 is the estimated chapter 7 administrative expenses.

Dckt. 22.

On Schedule A/B, Debtor states that Debtor is the only person with an interest in the Real Property that has a value of \$260,000. Schedule A/B, Part 1, Question 1; Dckt. 1. But then under other information Debtor states “Co-debtor is a joint owner of the property with her siblings. Needs lots of work to bring up to standards.” *Id.*

Thus, this information under penalty of perjury is internally inconsistent. Is the Debtor the only owner in fee simple, or is the co-debtor a “joint-owner” with others, and there is only a fractional interest in the bankruptcy estate? Debtor then states under penalty of perjury that while the Property has a value of \$260,000, the current value of the Debtor’s interest is only \$44,200. *Id.*

On Schedule C Debtor claims an exemption of \$19,655 pursuant to California Code of Civil Procedure § 703.140(b)(5).

On Schedule D, no creditor with a claim secured by the Real Property is listed. *Id.* At 20.

No secured claim has been filed by any creditor asserting a security interest in the Real Property.

No creditors with any claims secured by the Real Property are included in the proposed plan. Dckt. 4.

In the Reply, Debtor now states that there are (\$215,800) of liens that encumber the Real Property. But Debtor has stated under penalty of perjury that there are no debts secured by the Real Property worth \$260,000 for which Schedule A/B states that Debtor is the only owner of the Real Property. Dckt. 1 at 19.

While the Trustee argues about the Schedule C exemption computation, the Debtor “manufactures” (given that none are identified under penalty of perjury on Schedule D and no proofs of claim have been filed) alleged creditors with liens of (\$215,800) to consume most of the value in the Real Property owned by Debtor.

Based on the information provided in the Schedules by Debtor, the Estate has in it a Real Property asset with a value of \$260,000, which may be liquidated and used to pay creditors.

On the Petition it is stated that Debtor lives at 2671 Capay Street, Esparto, California. Dckt. 1 at 2. This is not listed on Schedule A/B as real property owned by Debtor. No leases are listed on Schedule G. Dckt. 1 at 27. On Schedule J Debtor lists a monthly rental or mortgage payment of \$1,425.00. *Id.* at 31.

The court having been provided with either incomplete information, or accurate information showing a \$260,000 unencumbered asset in the bankruptcy estate, the Plan cannot be confirmed.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained, and the Plan is not confirmed.

14. [21-20775-E-13](#) **JOSEPH/MARTHA ESPANA** **MOTION TO CONFIRM PLAN**
[PSB-3](#) **Paul Bains** **6-22-21 [57]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 22, 2021. By the court’s calculation, 49 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Amended Plan is denied.
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The debtors, Joseph Humberto Espana and Martha Eugenia Espana (“Debtor”), seek confirmation of the Amended Plan. The Amended Plan provides for plan payments of \$6,920.00 for months 3 and 4; followed by monthly plan payments of \$6,941.79 for months 5 through 60; and a 100% dividend to unsecured claims totaling \$14,285.84. Amended Plan, Dckt. 61. 11 U.S.C. § 1323 permits a

debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on July 26, 2021. Dckt. 64.

CREDITOR'S OPPOSITION

JPMorgan Chase Bank, N.A. ("Creditor") holding a secured claim over commercial real property commonly known as 1107 N. Commerce Avenue, Stockton, California ("Property") filed an Opposition on July 27, 2021. Dckt. 67. Creditor opposes confirmation of the Plan on the basis that:

- A. Debtor have failed to make all Loan payments owing since April 1, 2020 through the petition date in the aggregate amount of \$27,898.01 (inclusive of accrued interest, late fees, trustee fees and legal fees, less credit given for unapplied payments), as set forth in Creditor's Proof of Claim 7-1.
- B. Creditor is concerned that the Debtor have not addressed in the Plan how they will properly maintain the Property after Creditor learned that there are unconsented liens recorded by the city of Stockton over the Property due to code violations.

Creditor requests that any Plan ensure the insurance and property taxes secured against the Property are timely paid and maintained.

Creditor has filed a series of documents from the County Recorder's Office in support of the Opposition. These have not been authenticated, either by a witness or as provided in Federal Rules of Evidence 901 et seq. It is not clear how these recorded documents are ones for which judicial notice can be given:

a) Scope. This rule governs judicial notice of an adjudicative fact only, not a legislative fact.

(b) Kinds of Facts That May Be Judicially Noticed. The court may judicially notice a fact that is not subject to reasonable dispute because it:

(1) is generally known within the trial court's territorial jurisdiction; or

(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

Fed. R. Evid. 201. The court cannot conclude that these "adjudicative facts" consisting of the records of a county recorder are "generally known within the trial court's territorial jurisdiction." As to such being readily determined from sources, it is unclear how the records of a county recorder can be "readily determined."

In addition to authentication by a witness, the Supreme Court provides in Federal Rule of Evidence 902 that records like this can be self-authenticating when a certified public record.

DISCUSSION

Failure to Address Property Taxes and Insurance

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Creditor, the city of Stockton has recorded code enforcement liens and notice of violation over the Property. Creditor argues that Debtor have neither demonstrated that the code violations on the Property have been remediated and any resultant liens released, nor that their violations have been abated. Creditor is concerned that the Debtor have not addressed in the Plan how they will properly maintain the Property.

A review of Debtor's operating budget fails to account for the property taxes and insurance on the Property.

The Plan lists the secured claim of "Chase" with a \$27,898.01 pre-petition arrearage to be paid as a Class 1 Claim. Amended Plan, Dckt. 61 at 3. This arrearage is to be paid \$481.00 a month for months 3 through 60 of the Plan. Amended Plan, § 7.02; *Id.* at 7.

On Schedule I, Debtor states that neither of the debtors are employed, with their income consisting of \$2,827 from rental of property or operation of a business, \$1,116 and \$1,769 in Social Security monthly, \$436.22 and \$535.67 from annuities, and \$6,018.68 retirement income. Dckt.43. Debtor's monthly income totals \$12,702.57, which is \$152,430 in annual income.

The Projected Rental Income and Expenses attached to Schedule I projects \$6,600 in monthly rental income, (\$3,773) in expenses, and \$2,827 in net monthly rental income (before payment of the secured claim). *Id.* at 5.

On Schedule J Debtor lists \$587.50 as monthly tax withholding from retirement pay. *Id.* at 7. This \$587.50 provides for \$7,050.00 to be applied to Debtor's federal and state income taxes on the \$152,430 in annual income. No other amounts are provided for payment of any taxes on Schedule J.

Even if the mortgage payments significantly reduce the \$2,827 income from the rental of the properties by Debtor, that still leaves \$118,500 in income, for which Debtor is only withholding \$587 a month. It is not clear that this would be sufficient.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtors, Joseph Humberto Espana and Martha Eugenia Espana (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm the Amended Plan is denied.

15.	<u>21-21883</u> -E-13 <u>AP-1</u> 15 thru 17	WILLIAM VANNUCCI Mikalsh Liviaks	OBJECTION TO CONFIRMATION OF PLAN BY JPMORGAN CHASE BANK, NATIONAL ASSOCIATION 7-14-21 <u>[44]</u>
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 14, 2021. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----
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The Objection to Confirmation of Plan is overruled.
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JPMorgan Chase Bank National Association (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that the Debtor’s plan fails to provide for the full value of Creditor’s claim and does not promptly cure Creditor’s pre-petition arrears.

DISCUSSION

On August 3, 2021 Debtor filed as Exhibit A, a copy of an order confirming Debtor's plan which provides that the plan was amended to provide for Creditor claim as follows:

IT IS FURTHER ORDERED that, pursuant to 11 U.S.C. § 1323, the plan is amended as follows: JPMorgan Chase Bank National Association's ("JP") secured claim (\$241,453.61) is moved to Class 1 of Debtor's Plan. JP shall be paid its contractual payment monthly (approximately \$1590) as well as a monthly arrearage dividend of \$430 beginning month 13 of the Plan to pay the full arrearage (\$20,644.91) on JP's claim. Additionally, post-petition arrears of \$4,764.21 shall be paid by the Trustee at a rate of \$430 per month beginning month 4 of the Plan.

Dckt. 54 at 4.

The specific term was signed by Wendy Locke on August 2, 2021, which further stated the following:

Approved by Wendy Locke, Attorney for JPMorgan Chase Bank National Association.

Id.

Debtor having addressed Creditor's claim and Creditor having approved the term, the Objection is overruled.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by JPMorgan Chase Bank National Association ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled; however, whether the Plan will be confirmed will be determined as part of the Chapter 13 Trustee's Objection to Confirmation.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on July 14, 2021. By the court's calculation, **27** days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----
-----.

The Objection to Confirmation of Plan is sustained.
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

- A. Debtor has failed to provide tax returns.
- B. Debtor has failed to provide pay advices.
- C. The Plan may not be feasible.
- D. Debtor fails the liquidation analysis.

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide Pay Stubs & Tax Returns

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). Also, the Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide all necessary pay stubs and has failed to provide the tax transcript. Those are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee:

1. Debtor's Schedule B is inaccurate after Debtor admitted at the Meeting of Creditors that their business, Vannucci Technologies, Inc. has accounts receivables not listed;
2. Debtor states in Schedule I as "Business Owner" but at the Meeting of Creditors admitted that he is an employee of an S Corporation and provided pay advices for Vannucci Technologies, Inc.;
3. Trustee is uncertain as to Debtor's dependent where three are claimed but only a 17-year old is listed; and
4. The means test appears to be based on Vannucci Technologies, Inc., which includes the corporation's income and expenses. It is unclear to the Trustee if these expenses were also included as part of the Business Expenses listed on Form 122C-2, since these expenses do not appear to be listed on Schedules I or J.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor Fails Liquidation Analysis

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee states that Debtor are taking impermissible deductions by factoring in costs of sale and incorrect trustee's fees, to lower the amount of equity and not pay what the Chapter 7 creditors are owed. Trustee argues that Debtor should not be allowed to deduct cost of sale on assets that would not otherwise be liquidated in the Chapter 7 or are fully encumbered (either by secured liens or exemptions). Trustee further adding that Debtor are using an incorrect formula and amount for deducting the Chapter 7 Trustee's fees which is causing the deduction to be higher than it should be.

The Trustee believes the liquidation amount is \$32,949.29, which is comprised of the equity as follows: Ford F150 \$1,514; Ford F-350 \$23,277; Ford F-550 \$2,222; 1974 Nova \$750; Maximum

Cruiser \$1,000; Honda 400 \$500; 2007 Honda Rancher \$900; 2011 Attitude Travel Trailer \$2,500; cash \$5; and bank accounts \$281.25.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 15, 2021. By the court's calculation, 56 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----

-----.

<p>The Objection to Confirmation of Plan is overruled.</p>

Ford Motor Credit Company LLC ("Creditor") holding a secured claim has filed a limited opposition to the confirmation of the Plan on the basis that the correct monthly payment amount is \$1,130.90. Creditor has filed this limited objection out of abundance of caution since Creditor does not want to be bound by the amount of \$1,104.00 as stated in the Plan.

DISCUSSION

A review of Debtor's Plan provides Debtor's Plan provides for Creditor as a Class 4 claim at a monthly contract installment in the amount of \$1,104.00. Thus, the Debtor does not properly amount Creditor's monthly installment payment.

~~Debtor's Plan already having been denied confirmation pursuant to Trustee's Objection, the~~

~~Plan is also not confirmed pursuant to Creditor's objection. The Objection is sustained.~~

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Ford Motor Credit Company LLC ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~**IT IS ORDERED** that the Objection is sustained, and the plan is not confirmed.~~

18. [20-23896-E-13](#) **MILTON PEREZ** **MOTION TO CONFIRM PLAN**
[MET-4](#) **Mary Ellen Terranella** **6-28-21 [98]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 28, 2021. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Amended Plan is XXXXX.
--

The debtor, Milton Raul Perez ("Debtor"), seeks confirmation of the Amended Plan. The

Amended Plan provides for:

1. monthly plan payments of \$1,600 for 12 months;
2. followed by monthly plan payments of \$4,100 for 12 months;
3. then \$4,400.00 for 36 month;
4. and a 100 percent dividend to unsecured claims totaling \$5,894.00.

Amended Plan, Dckt. 99. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CREDITOR'S OPPOSITION

1 Oak Ventures Step Fund LLC ("Creditor") holding a secured claim filed an Opposition on July 20, 2021. Dckt. 108. Creditor opposes confirmation of the Plan on the basis that:

- A. Debtor may not be able to make plan payments.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 27, 2021. Dckt. 110. Trustee opposes confirmation of the Plan on the basis that:

- A. The claim of PHH Mortgage Corporation is misclassified as a class 4 claim.
- B. Debtor's plan fails to mention a refinance in progress for the first and second mortgages on their residence.

DISCUSSION

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6).

Here, Creditor asserts that Debtor has failed to provide proper documentation in support of his contention that he will be able to make plan payments because he will be receiving contributions from his family and a \$750 from a boarder.

Debtor filed a Response to Creditor's Opposition on August 3, 2021 asserting the following:

1. Debtor considers Creditor's loan predatory where the interest rates in March 2007 when the loan was made were 6.16% and Creditor's loan had an 11.25% interest.

2. Debtor's family appeared in court at the June 29, 2021 hearing and attested to their ability to financially assist Debtor. The court was able to assess the credibility of the Debtor and his family at the June 29, 2021 hearing.
3. Debtor has provided all requested documents related to the refinance.
4. While Creditor complains that they have been delayed too long in collecting on its claim and have only received "very little money," Creditor has received each and every month the contractual monthly on-going payment from the Chapter 13 trustee.

Dckt. 115.

Moreover, according to Trustee, despite the fact that there are arrears to address for creditor PHH Mortgage Corporation, Debtor has classified this creditor Class 4. This classification provides for a debtor to pay a creditor directly where no arrears are due. The Plan also fails to list that Debtor is working on refinancing two mortgages.

Debtor filed a Response to Trustee's Objection on August 3, 2021 explaining that the arrearage has been addressed since March 2021 and that Debtor only owes a \$950.00 "pre-petition fees due" which consisted of attorneys' fees from the Debtor's previous Chapter 13 case, and thus this suggests that Debtor is not significantly behind in pre-petition mortgage such that inclusion of the claim as a Class 1 claim would be necessary. Dckt. 113 at 2:20-26.

Debtor also explains that he has applied for a refinance of both the first mortgage from PHH Mortgage Corporation and the second mortgage held by 1 Oak Ventures Step Fund through Pacific Lending Corporation as stated at the June 29, 2021 hearing. *Id.*, at 3:1-7. Debtor further explains that the refinance package is complete and the loan is in underwriting. Debtor asserts that the refinance should pay off the Plan with a 100% dividend to allowed unsecured creditors. *Id.*, at 3:8-10.

DECISION

At the hearing ~~xxxxxxx~~

~~The Amended Plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Milton Raul Perez ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~IT IS ORDERED~~ that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on June 28, 2021, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

19. [20-20736-E-13](#) SUSAN CHAVARRIA
[HDR-1](#) Harry Roth

**MOTION FOR COURTS FINDING THAT
DEBTORS EX-SPOUSES SHARE OF
COMMUNITY RETIREMENT FUNDS
EARNED BY DEBTOR IS NOT
PROPERTY OF THE BANKRUPTCY
COURT
7-1-21 [20]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Debtor's Ex-Spouse, State Court Counsel and Office of the United States Trustee on July 1, 2021. By the court's calculation, 40 days' notice was provided. 14 days' notice is required.

The Motion for Court's Finding that Debtor's Ex-Souse's Share of Community Retirement Funds Earned by Debtor is not Property of the Bankruptcy Estate was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

The Motion for Court's Finding that Debtor's Ex-Souse's Share of Community Retirement Funds Earned by Debtor is not Property of the Bankruptcy Estate is granted.

The Chapter 13 debtor, Susan Margaret Chavarria (“Debtor”), requests the court determine that Debtor’s former husband’s share of community property is not property of Debtor’s bankruptcy estate. Specifically, those funds in Debtor’s various defined contribution retirement account funds in three 403(b) retirement accounts, one 401(a), one IRA, and one defined benefit pension plan, as listed on Debtor’s Schedule A/B and Schedule C. In the alternative, Debtor requests that the court provide relief from the automatic stay for good cause pursuant to 11 U.S.C. § 362 (d)(1) because Debtor’s former spouse, Mr. Alejandro Chavarria, party in interest, lacks the adequate protection of his interest in the community retirement funds.

Debtor explains in support of the motion that on November 15, 2019 a Judgment of Dissolution was entered by the Yolo County Superior Court ordering the following:

The community property interest in Respondent’s retirement benefits from her employment with Dignity Health shall be divided equally between the parties pursuant to Qualified Domestic Relations Orders to be prepared by an expert selected by Respondent and paid for by Respondent. (*Chavarria v. Chavarria; Judgment of Dissolution Attachment, Page 5, Lines 11-15, Filed November 15, 2019 with Yolo Superior Court*) See Exhibit A.

Motion, at 1. Debtor adds that the Judgment granted a property interest in the retirement funds and authorized the issuance of one of more Qualified Domestic relations Orders (“QDRO”) to enforce his interest. Thus, the request made of the court today is so that the state court is not enjoined from determining the dollar value of Debtor’s former husband’s share of the retirement funds and the percentage of the community share of the defined benefit pension account or from issuing QDROs to effect the transfer of awarded funds to Debtor’s former husband or to any of the separate accounts established for his benefit.

Trustee does not oppose the relief requested. Dckt. 27.

DISCUSSION

Here, Debtor seeks to establish that Mr. Chavarria’s share of the interest in the community retirement funds as determined by the Judgment is not property bankruptcy estate. This is so that the state court handling Debtor’s dissolution may issue orders regarding these funds for the benefit of Debtor’s former spouse without the stay affecting such orders.

Debtor has provided the State Court Judgment and it has been properly authenticated by Debtor in her Declaration. Exhibit A, Dckt. 25; Declaration, Dckt. 23.

The State Court Judgment has ordered the following:

6. The community property interest in Respondent’s retirement benefits from her employment with Dignity Health shall be divided equally between the parties pursuant to Qualified Domestic Relations Orders to be prepared by an expert selected by Respondent and paid for by Respondent.

State Court Judgment, Dckt. 25, at 8. Thus, Debtor’s former spouse has been deemed entitled to half of Debtor’s retirement funds. This determination having been made on November 15, 2019.

Decision

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The moving party bears the burden of establishing a prima facie case that relief from the automatic stay is warranted, however. *LaPierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. EC-16-1087, 2016 Bankr. LEXIS 2205, at *8–9 (B.A.P. 9th Cir. May 23, 2016). To determine “whether cause exists to allow litigation to proceed in another forum, ‘the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the debtor and the bankruptcy estate.’” *Id.* at *9 (quoting *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at *6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int’l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)). The basis for such relief under 11 U.S.C. § 362(d)(1) when there is pending litigation in another forum is predicated on factors of judicial economy, including whether the suit involves multiple parties or is ready for trial. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass’n v. Sanders (In re Santa Clara Cty. Fair Ass’n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

The court finds that the nature of the State Court Litigation warrants relief from stay for cause as the issues have been settled by the state court order and the retirement funds having been divided equally by the state court. Therefore, judicial economy dictates that the state court ruling be allowed to continue after the considerable time and resources put into the matter already.

~~The court shall issue an order modifying the automatic stay as it applies to Debtor to allow the State Court to issue further orders as they pertain to the distribution of the retirement funds to Debtor’s former spouse. The automatic stay is not modified with respect to enforcement of the judgment against Debtor, David Cusick (“the Chapter 13 Trustee”), or property of the bankruptcy estate. Any judgment obtained shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~The Motion for Court's Finding that Debtor's Ex-Souse's Share of Community Retirement Funds Earned by Debtor is not Property of the Bankruptcy Estate filed by Susan Margaret Chavarria (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion is granted.~~

~~**IT IS FURTHER ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are modified as applicable to Susan Margaret Chavarria (“Debtor”) to allow the State Court, Yolo County Superior Court to proceed with~~

the dissolution case in *Chavarria v. Chavarria*, Case Number FL18-396.

————— **IT IS FURTHER ORDERED** that the automatic stay is not modified with respect to enforcement of any judgment against Debtor, David Cusick (“the Chapter 13 Trustee”), or property of the bankruptcy estate. Any judgment obtained by Movant shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

————— No other or additional relief is granted.

FINAL RULINGS

20. [20-25705-E-13](#) **DAVID NIETO HERNANDEZ** **MOTION FOR COMPENSATION FOR**
[PSB-2](#) **Paul Bains** **PAULDEEP BAINS, DEBTORS**
ATTORNEY(S)
7-20-21 [46]

Final Ruling: No appearance at the August 10, 2021 hearing is required.

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 20, 2021. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Motion for Allowance of Professional Fees is granted.

Bains Legal, PC, the Attorney ("Applicant") for David Nieto Hernandez, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period April 19, 2021, through July 19, 2021. Applicant requests fees in the amount of \$1,841.50 and costs in the amount of \$0.00.

Trustee's Response

Trustee filed a Response on July 27, 2021 noting that Trustee is not certain that a single plan modification due to the decrease of the Debtor's income necessitates additional fees of \$1,841.50, where Section 3.05 identifies that Debtor's attorney chose to comply with Local Bankruptcy Rule 2016-1(c). Dckt. 51.

Debtor's Response

Debtor filed a Response explaining that additional work was necessary because of the drastic income changes—which required substantial work—that were not known or could have been known at the outset of the case.

DETERMINATION THAT NO HEARING IS REQUIRED

Though set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(2) for which oral opposition may be presented at the hearing, the Chapter 13 Trustee has proactively identified in writing an issue for consideration by the court. Doing so, the Trustee has allowed the court to consider the issue in a cost effective manner for the Parties.

Counsel for Debtor has responded, with the Trustee and Counsel providing the court with the ability to provide this final ruling.

The amount of the fees requested are modest. As stated by Counsel, there were some significant changes. Creditors with unsecured claims dropped from not less than 70% to not less than 0%. The Plan payment dropped from \$998 to \$585 (a 41% decrease).

Under Local Bankruptcy Rule 2016-1(c), though the attorney accepts the fixed fee for confirmation and completion of the confirmed plan, additional fees can be allowed by the court:

[i]n instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees.

On pages 2 and 3 of the Motion, Applicant reviews the supplemental work done and with respect to it being unanticipated:

It was unanticipated when the debtor filed his chapter 13 plan that he would be unable to meet his numbers at his work, that he would apply and receive a new position at work, and ultimately have a decreased income than what he originally projected when this chapter 13 case was filed.

Motion, p. 3:2-5; Dckt. 46 (emphasis in original).

Representation of consumers in Chapter 13 cases, while not in the dollar league of “big city” Chapter 11 attorneys, is not a for free, *pro bono*, legal service or a “not really legal” legal services.

Here, counsel's work was substantial. Here, counsel's substantial work was due to unexpected post-confirmation changes. The additional fees, in addition to being very reasonable, are properly allowable for a consumer attorney under Local Bankruptcy Rule 2016-1 and the Bankruptcy Code.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the

circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney is obligated to consider:

- (a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant’s for the Estate include preparing and filing a Motion to Modify Plan, drafting a new plan, and preparing the instant Motion for Compensation. The court finds the services were beneficial to Client and the Estate and were reasonable.

“No-Look” Fees

In this District, the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a plan and the services related thereto through the debtor obtaining a discharge. Local Bankruptcy Rule 2016-1 provides, in pertinent part,

(a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority.”

...

(c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.

(1) The maximum fee that may be charged is \$4,000.00 in nonbusiness cases, and \$6,000.00 in business cases.

(2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.

(3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor’s attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed \$4,000.00 in attorneys’ fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 41. Applicant prepared the order confirming the Plan.

Lodestar Analysis

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). “This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer’s services.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional’s fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion “in view of the [court’s] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters.” *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. *See In re Placide*, 459 B.R. at 73 (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Motion/Application to Modify Chapter 13 Plan: Applicant spent 4.3 hours in this category. Applicant communicated with debtor; reviewed income and expenses; drafted motion, notice of hearing, and declaration; drafted a modified plan after updated budget and payments; filed and served said motion; and reviewed final ruling on motion.

Motion for Compensation: Applicant spent 2.5 hours in this category. Applicant prepared and filed Motion for Additional Attorney Fees.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Pauldeep Bains, Attorney	4.7	\$325.00	\$1,527.50
Paralegal	2.1	\$185.00	\$388.50
Total Fees for Period of Application			\$1,841.50

Costs and Expenses

Applicant does not seek costs and expenses pursuant to this application.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including a Motion to Modify Plan, a new plan, and the instant Motion for Compensation, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$1,841.50 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick (“the Chapter 13 Trustee”) from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$1,841.50
Costs and Expenses	\$0.00

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Bains Legal, PC (“Applicant”), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Bains Legal, PC is allowed the following fees and expenses as a professional of the Estate:

Bains Legal, PC, Professional Employed by David Nieto Hernandez (“Debtor”)

Fees in the amount of \$1,841.50

Expenses in the amount of \$0.00,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.

IT IS FURTHER ORDERED that David Cusick (“the Chapter 13 Trustee”) is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

21. [19-20825-E-13](#) [SLE-8](#) **PIOTR/CELESTIAL REYSNER** **OBJECTION TO CLAIM OF WELLS**
Steele Lanphier **FARGO BANK, N.A., CLAIM NUMBER**
13
6-23-21 [127]

Final Ruling: No appearance at the August 10, 2021 hearing is required.

Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on June 23, 2021. By the court’s calculation, 48 days’ notice was provided. 44 days’ notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days’ notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days’ notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p>The Objection to Proof of Claim Number 13-1 of Wells Fargo Bank, N.A. is sustained, and the claim is disallowed in its entirety.</p>
--

Piotr Gabriel Reysner and Celestial Olivia Reysner, the Chapter 13 Debtor, (“Objector”) requests that the court disallow the claim of Wells Fargo Bank, N.A. (“Creditor”), Proof of Claim No.

13-1 (“Claim”), Official Registry of Claims in this case; or in the alternative, that it be deemed a general unsecured non-priority debt. The Claim is asserted to be secured in the amount of \$3,682.70. Objector asserts that Creditor has failed to provide sufficient evidence of its alleged security interest.

Debtor also reserve right to request attorney’s fees if the Creditor opposes the Objection.

Trustee does not oppose Debtor’s Objection.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor’s proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

According to Debtor, the claim relies solely on the assertion that debt is secured by “items purchased from Brookstone” without describing the “items,” or indicating how those “items” are secured.

A review of Proof of Claim 13-1 indicates Creditor claims a secured claim in the amount of \$3,682.70. Proof of Claim, at 2. The Proof of Claim further indicates that the claim is secured by “ITEMS PURCHASED FROM BROOKSTONE.” *Id.* Creditor did not attach a contract or provide a description of the “items” securing the claim.

Creditor has failed to provide evidence of the claim as required by FRBP 3001. Thus, pursuant to FRBP 3001(c)(2)(D)(i), Creditor’s failure to present evidence is grounds to disallow the claim.

Based on the evidence before the court, Creditor’s claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim of Wells Fargo Bank, N.A. (“Creditor”), filed in this case by Piotr Gabriel Reysner and Celestial Olivia Reysner, the Chapter 13

Debtor, (“Objector”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 13-1 of Creditor is sustained, and the claim is disallowed in its entirety.

Attorney’s fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

22.	<u>16-27832-E-13</u> <u>RWF-1</u>	SCARLET BAIN Robert Fong	CONTINUED MOTION TO MODIFY PLAN 6-4-21 [36]
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Final Ruling: No appearance at the August 10, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 4, 2021. By the court’s calculation, 46 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of non-opposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Motion to Confirm the Modified Plan is granted.
--

The debtor, Scarlet Anne Bain (“Debtor”) seeks confirmation of the Modified Plan because she encountered unanticipated costs related to supporting her elderly father, and her dog’s heart

condition. Declaration, Dckt. 38. The Modified Plan provides payments of \$225.00 per month for 6 months (the duration of the plan, beginning June 25, 2021), and a 4% dividend to unsecured claims totaling \$185,858.00. Modified Plan, Dckt. 39. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee") filed an Opposition on June 23, 2021. Dckt. 44. Trustee opposes confirmation of the Plan on the basis that the Debtor did not file a supplemental Schedule I and J in support of the motions and therefore, Trustee is uncertain of Debtor's ability to pay.

DISCUSSION

Failure to File Supplemental Schedules

The Chapter 13 Trustee asserts that without supplemental Schedule I and J, the Trustee is unable to ascertain Debtor's ability to pay, especially where the most recent Schedule I and J were filed on November 29, 2016. See Dckt. 1.

In her Reply, Debtor asserts that she filed updated income and expense schedules on July 9, 2021 showing her current budget and her ability to make the ongoing Chapter 13 Plan payments. Dckt. 49.

A review of the docket shows that Debtor filed Amended (not Supplemental documenting post-petition changes) Schedule I which states Debtor has a combined monthly income of \$4,891.55 with a special note stating that the figures as listed are average income over a 12-month period where Debtor (who is employed by the Sacramento City Unified School District) only gets paid 10 months out of the year. Dckt. 47. Debtor also filed Amended Schedule J which calculates \$4,673.00 in monthly expenses, leaving Debtor with a net monthly income of \$218.55. *Id.*

Debtor argues that the Trustee cites no other basis for opposition to the Motion to Modify Plan and Confirm Amended Plan and requests that the Court overrule the Trustee's Opposition and grant Debtor's Motion

Debtor filed "Amended" Schedules I and J, which date back to the November 2016 filing of this case. In the original Schedule I, Debtor stated having only \$3,469.24 in monthly income. Dckt. 1 at 28-29. With the Amended Schedule I, Debtor states under penalty of perjury that she actually has had income of \$4,891.95 a month since November 2016. Amended Sch. I, Dckt. 47 at 1-2. Thus, for the past fifty-six (56) months Debtor has had an additional \$1,400 in additional income heretofore unreported.

Debtor's "Amended" Schedules I documents that the financial information previously provided was substantially inaccurate. Possibly Debtor may argue "Supplemental, Amended," it's just "potayto, potahto," so who really cares. Well, that song concludes with "Let's Call the Whole Thing Off." ^{Fn.1.}

FN. 1. “Let’s Call the Whole Thing Off,”

You like potato and I like potahto
You like tomato and I like tomahto
Potato, potahto, Tomato, tomahto.
Let's call the whole thing off

Ira Gershwin and George Gershwin, 1937.

As we know in the law, words have significance, and there is a legal difference between a “mere” supplemental schedule documenting post-petition changes and an amended schedule that dates back to the filing and corrects an error in what was previously said under penalty of perjury.

In looking at the Debtor’s expenses, there are some significant changes. These include Debtor increases her transportation expense by more than 100%, increasing it from (\$250) to (\$550); utilities by almost 100%, increasing from (\$90) to (\$175); cell phone by more than 466%, increasing from (\$45) to (\$255); clothing by 166%, from (\$75) to (\$200); personal care products and services by 60%, from (\$125) to (\$200).

While listing her adult sister as a dependent, no income information is provided concerning the sister and there are no contributions by Debtor’s sister, such as making any contributions to the household expenses.

At the hearing, the Trustee concurred that once the Schedules are filed as supplemental schedules, the Motion may be granted.

Counsel for Debtor will lodge with the court a proposed order granting the motion once the Supplemental Schedules as filed.

Supplemental Schedules I and J

Debtor filed Supplemental Schedules I and J on July 27, 2021 as required at the previous hearing. Dckt. 53.

Debtor having filed the Supplemental Schedules as required, the Plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the debtor, Scarlet Anne Bain (“Debtor”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Chapter 13 Plan filed on June 4, 2021, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

23. [17-25136-E-13](#) **JOHN MCFARLIN AND** **MOTION TO MODIFY PLAN**
[TLA-1](#) **SAMANTHA ROBBINS** **6-23-21 [69]**
 Thomas Amberg

Final Ruling: No appearance at the August 10, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 23, 2021. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted.
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11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtors, John Thomas McFarlin and Samantha Alexandra Robbins ("Debtors"), have filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on July 26, 2021. Dckt. 76. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, John Thomas McFarlin and Samantha Alexandra Robbins (“Debtors”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor’s Modified Chapter 13 Plan filed on June 23, 2021, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the August 10, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 2, 2021. By the court’s calculation, 39 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Confirm the Modified Plan is granted.
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11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtors, James David Oliver and Heather L. Oliver (“Debtors”), have filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on July 26, 2021. Dckt. 88. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, James David Oliver and Heather L. Oliver (“Debtors”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on July 2, 2021, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

25. [17-25246-E-13](#) **JORGE/DINA CHAVEZ** **MOTION TO MODIFY PLAN**
[PSB-3](#) **Paul Bains** **6-22-21 [45]**

Final Ruling: No appearance at the August 10, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 23, 2021. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The Motion to Confirm the Modified Plan is granted.</p>

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtors, Jorge Chavez and Dina Mae Chavez ("Debtor"), have filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on July 26, 2021. Dckt. 53. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Jorge Chavez and Dina Mae Chavez (“Debtors”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor’s Modified Chapter 13 Plan filed on June 22, 2021, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the August 10, 2021 hearing is required.

Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on June 16, 2021. By the court's calculation, 55 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 1 of Cavalry SPV I, LLC is sustained, and the claim is disallowed in its entirety.

Christopher Steven Keener, the Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Cavalry SPV I, LLC ("Creditor"), Proof of Claim No. 1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$348.00. Objector asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the balance was due under the contract or four years from the date the last payment was made under the contract. Objector states that according to the Proof of Claim, the last transaction date was May 6, 2016 and the charge off date was December 2, 2016. The date of last payment on the Statement of Account Information attached to the Proof of Claim states May 6, 2016.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting

to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

California Code of Civil Procedure § 337 states in relevant part:

2. An action to recover (1) upon a book account whether consisting of one or more entries; (2) upon an account stated based upon an account in writing, but the acknowledgment of the account stated need not be in writing; (3) a balance due upon a mutual, open and current account, the items of which are in writing; provided, however, that where an account stated is based upon an account of one item, the time shall begin to run from the date of said item, and where an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.

The California Legislature made a substantive amendment to California Code of Civil Procedure § 337 in 2018, which became effective January 1, 2019, that moves the expiration of the statute of limitations on a contract action from an affirmative defense to affirmative bar on a creditor seeking to enforce the obligation.

(d) When the period in which an action must be commenced under this section [contract, instrument, book account, account stated, open account, rescission of a written contract] has run, a person shall not bring suit or initiate an arbitration or other legal proceeding to collect the debt. The period in which an action may be commenced under this section shall only be extended pursuant to Section 360.

Cal. C.C.P. § 337(d).

The Bankruptcy Code provides certain extensions of time for actions a creditor may take when a debtor files for bankruptcy. Specifically, 11 U.S.C. § 108(c) provides:

Except as provided in section 524 of this title, if **applicable nonbankruptcy law**, an order entered in a nonbankruptcy proceeding, or an agreement **fixes a period for commencing or continuing a civil action** in a court other than a bankruptcy court **on a claim against the debtor**, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then **such period does not expire until the later of--**

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.

A review of Proof of Claim No. 1-1 lists the charge off date as December 2, 2016. The court

takes judicial notice that a creditor does not “charge off” an account if payments are being made or further credit is being extended. (This basic fundamental point of credit transactions is commonly known by both creditors and consumers alike.)

No payment or other transaction occurred after May 6, 2016. Thus, the four-year statute of limitations expired on May 6, 2020.

This bankruptcy case was filed on April 27, 2021—356 days after the statute of limitations expired. There was no period of time for 11 U.S.C. § 108 to preserve and extend for Creditor.

Based on the evidence before the court, the creditor’s claim is disallowed in its entirety due to the statute of limitations expiring prior to the filing of the case. The Objection to the Proof of Claim is sustained.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim of Cavalry SPV I, LLC (“Creditor”), filed in this case by Christopher Steven Keener, the Chapter 13 Debtor, (“Objector”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 1 of Creditor is sustained, and the claim is disallowed in its entirety.

Attorney’s fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

Final Ruling: No appearance at the August 10, 2021 hearing is required.

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on July 13, 2021. By the court’s calculation, 28 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further.

The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

<p>The Objection to Confirmation of Plan is overruled.</p>

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that the Chapter 13 debtor, Janice E. Frazier (“Debtor”), failed to attend the Meeting of Creditors.

DISCUSSION

Failure to Appear at 341 Meeting

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Continued Meeting of Creditors was held on July 22, 2021, and Trustee’s Report indicates Debtor appeared. Trustee has filed nothing further, and the court therefore determines that Debtor’s appearance has resolved this Objection.

Debtor’s Plan was confirmed and the court’s order was entered on July 28, 2021. Dckt. 19.

Debtor having attended the continued Meeting of Creditors and Debtor’s plan having been

confirmed on July 28, 2021, the Objection is overruled.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled.

28.	<u>19-27861</u> -E-13 <u>AP-1</u>	EUGENIA RAKESTRAW Seth Hanson	MOTION FOR COURT APPROVAL OF PAYMENT DEFERRAL AGREEMENT 7-9-21 [27]
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Final Ruling: No appearance at the August 10, 2011 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 6, 2021. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

The Motion for Court Approval of Payment Deferral Agreement has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p>The Motion for Court Approval of Payment Deferral Agreement is granted.</p>

The Motion for Court Approval of Payment Deferral Agreement filed by Wells Fargo Bank, N.A. (“Creditor”) seeks court approval for the Chapter 13 debtor, Eugenia Ann Rakestraw (“Debtor”), to enter into and finalize a Payment Deferral Agreement offered by Creditor, which provides for the

deferment of eight (8) payments, plus other unpaid amounts to bring Debtor's loan current. Creditor's claim is provided for in the Plan as a Class 4 claim.

Debtor filed a Joinder to Creditor's motion on August 6, 2021. Dckt. 55. Debtor asserts that for the reasons as stated in Creditor's motion, Debtor requests that the court authorize the payment deferral agreement.

Trustee does not oppose the deferral agreement. Dckt. 49.

This Payment Deferral Agreement is consistent with the Chapter 13 Plan in this case and with Debtor's ability to fund that Plan. There being no objection from the Chapter 13 Trustee or other parties in interest, the Motion for Court Approval of Payment Deferral Agreement is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Court Approval of Payment Deferral Agreement filed by Wells Fargo Bank, N.A. ("Creditor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the court authorizes Eugenia Ann Rakestraw to defer eight payments that came due beginning September 1, 2020 through and including April 1, 2021, plus \$2,798.87 in other deferred amounts of the loan with Wells Fargo Bank, N.A. ("Creditor"), which is secured by the real property commonly known as 1808 Glenmark Way, Roseville, California, on such terms as stated in the Payment Deferral Agreement filed as Exhibit 1 in support of the Motion (Dckt. 29).

Final Ruling: No appearance at the August 10, 2021 hearing is required.

Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter Trustee, and Office of the United States Trustee on June 16, 2021. By the court's calculation, 55 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 34 of Pinnacle Service Solutions LLC is sustained, and the claim is disallowed in its entirety.

Levester Jackson and Jennifer Renee Jackson, the Chapter 13 Debtors, ("Objector") requests that the court disallow the claim of Pinnacle Service Solutions LLC ("Creditor"), Proof of Claim No. 34 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$309.52. Objector asserts that Creditor has failed to provided any documents which state the last payment date or charge off date in order to determine whether or not this claim is past the statute of imitations for collecting.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie

validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

A review of Proof of Claim 34-1 lists an unsecured claim for the amount of \$309.52. The basis of the claim is stated to be for "money loaned." There are no documents attached with the Proof of Claim providing information as to this debt. The attachments filed are copies of a Notice of New Ownership with an undated payment stub; an Account Detail which states the amount due but no dates; and Assignment and Bill of Sale. Thus, Creditor has failed to include the documents in support of the claim as required by FRBP 3001.

Creditor did not file an Opposition to this Objection.

Based on the evidence before the court, Creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim of Pinnacle Service Solutions LLC ("Creditor"), filed in this case by Levester Jackson and Jennifer Renee Jackson, the Chapter 13 Debtors, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 34 of Creditor is sustained, and the claim is disallowed in its entirety.

Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

Final Ruling: No appearance at the August 10, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—Hearing Not Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 30, 2021. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Objection to Claimed Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

Pursuant to Court's Order (Dckt. 79), the hearing on the Objection to Claimed Exemptions is continued to 2:00 p.m. on August 17, 2021, to be heard in conjunction with Trustee's Objection of Plan.

Final Ruling: No appearance at the August 10, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 29, 2021. By the court’s calculation, 42 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion for Allowance of Professional Fees is granted.

Peter G. Macaluso, the Attorney (“Applicant”) for David Earl Neihart and Sharon Dale Neihart, the Chapter 13 Debtor (“Client”), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period December 17, 2020, through April 12, 2021. Applicant requests fees in the amount of \$1,155.00 and costs in the amount of \$0.00.

Trustee does not oppose the fees requested. Dckt. 97.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the

estate at the time they were rendered?

- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney is obligated to consider:

- (a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant’s services for the Estate include a Motion to Modify. The court finds the services were beneficial to Client and the Estate and were reasonable.

“No-Look” Fees

In this District, the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a plan and the services related thereto through the debtor obtaining a discharge. Local Bankruptcy Rule 2016-1 provides, in pertinent part,

- (a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local

Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority.”

...

(c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.

(1) The maximum fee that may be charged is \$4,000.00 in nonbusiness cases, and \$6,000.00 in business cases.

(2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.

(3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor’s attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed \$4,000.00 in attorneys’ fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 87. Applicant prepared the order confirming the Plan.

Lodestar Analysis

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re*

Yermakov, 718 F.2d at 1471). “This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer’s services.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional’s fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion “in view of the [court’s] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters.” *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. See *In re Placide*, 459 B.R. at 73 (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*), 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Motion to Modify: Applicant spent 4.15 hours in this category. Applicant reviewed case history; met with clients; prepared new plan; prepared and filed Motion to Modify and Amended Schedules; and reviewed ruling.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Peter G. Macaluso	3.75	\$300.00	\$1,125.00
Paralegal	0.40	\$75.00	\$30.00
Total Fees for Period of Application			\$1,155.00

Costs and Expenses

Applicant does not seek allowance or recovery of costs and expenses.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including a Motion to Modify, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$1,155.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick (“the Chapter 13 Trustee”) from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$1,155.00
Costs and Expenses	\$0.00

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Peter G. Macaluso (“Applicant”), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Peter G. Macaluso is allowed the following fees and expenses as a professional of the Estate:

Peter G. Macaluso, Professional Employed by David Earl Neihart and Sharon Dale Neihart (“Debtor”)

Fees in the amount of \$1,155.00
Expenses in the amount of \$0.00,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.

IT IS FURTHER ORDERED that David Cusick (“the Chapter 13 Trustee”) is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.